

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6662 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

GOVINDBHAI JAKSIBHAI @ POPATBHAI BHARWAD

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR LR PUJARI AGP for Respondent Nos. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 26/10/1999

ORAL JUDGEMENT

#. Heard the learned advocate Mrs. Subhadra G. Patel for the petitioner and the learned AGP Mr. L.R. Pujari for respondent nos. 1, 2 and 3. The detention order dated 1.1.99 passed by respondent no.2 - Commissioner of Police, Ahmedabad city in exercise of power conferred under section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA" for short) is challenged in the present petition under article 226 of the Constitution of India.

#. The grounds of detention supplied to the petitioner under section 9(1) of PASA, copy of which is produced at Annexure :B inter alia indicate that three criminal cases for the offences made punishable under section 392 of IPC has been registered against the petitioner at Vatva and Odhav Police Stations on different dates. Furthermore, two witnesses on assurance of anonymity have supplied information on 30.12.98 in respect to the alleged anti-social activity of the petitioner. The statements given by the witnesses relate to the incidents dated 15.10.98 and 22.11.98 respectively. On the basis of the said material, respondent no.2 has come to a conclusion that the petitioner is a "dangerous person" within the meaning of Section 2(c) of PASA. That resort to the general provisions of law being insufficient to prevent the petitioner from continuing his anti-social activity which prejudicially affects the maintenance of public order, it is necessary to pass the impugned order. It is noteworthy that the detaining authority has stated that the petitioner-detenu was released on bail in respect to CR No. 473/97 and CR No. 273/97. However, the petitioner-detenu is in custody in respect to CR No. 488/98 registered at Vatva Police Station. It is also stated in the grounds of detention that the bail application has been moved by the detenu and it is likely that the petitioner would be released on bail. That on that apprehension that after being released on bail, the petitioner is likely to continue his anti-social activity, the impugned order is passed.

#. The petitioner has challenged the impugned order on numerous grounds. Vide clause 11, it has been stated that the statement made by the detaining authority in the grounds of detention to the effect that the petitioner-detenu is in judicial custody in the matter of CR No. 488/98 registered at Vatva Police Station is an incorrect statement. As a matter of fact, the petitioner was released on bail and the bail order as well as bail application were supplied with the compilation served to the petitioner on 2nd January, 1999.

#. Perusal of the papers suggests that vide order dated 31st December, 1998, the petitioner-detenu was released on bail by the competent Court in respect to CR No. 488/98 registered at Vatva Police Station. Despite the said state of fact, the detaining authority has considered factually incorrect statement while formulating the grounds for detention on 1.1.99 and has observed in the grounds that the detenu was in judicial

custody but was likely to get bail and after getting released on bail was likely to continue his anti-social activity. That the said statement is not only factually incorrect but it discloses the total non application of mind on the part of the detaining authority. The said statement disclosed that while formulating the grounds of detention, the detaining authority has failed to consider the aspect of less drastic remedy regarding cancellation of bail so as to prevent the petitioner from repeating his anti-social activity. That the said proposition of law has been accepted by this Court in the proceedings of L.P.A. No. 1056/99 decided on 15.9.99.

#. Affidavit filed on behalf of the respondents does not explain factual discrepancies in respect to the bail or judicial custody of the petitioner-detenu on the date of passing of the impugned order in respect to CR No. 488/98 registered at Vatva Police Station.

#. In the absence of any explanation, I am constrained to hold that the factually incorrect statement taken into consideration by the detaining authority and non consideration of less drastic remedy like cancellation of bail under section 437(5) of Cr.P.C. have rendered the impugned order invalid.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 1.1.99 passed by respondent no.2 against the petitioner is hereby quashed and set aside and the petitioner-detenu-Govindbhai Jaksibhai @ Popatbhai is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

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